APPENDIX A.

U. S. C., Title 12, Sec. 192.

On becoming satisfied, as specified in sections 131 and 132 of this title, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings. * * * (R. S. sec. 5234; May 15, 1916, c. 121, 39 Stat. 121; Aug. 23, 1935, c. 614, sec. 339, 49 Stat. 721.)

U. S. C., Title 12, Sec. 194.

From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held. (R. S. Sec. 5236.)

U. S. C., Title 12, Sec. 548.

The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits: Provided, however, That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from na-

tional banking associations located within the State on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

2. The shares of any national banking association owned by nonresidents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

4. The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section. (R. S. Sec. 5219; Mar. 4, 1923, c. 267, 42 Stat. 1499; Mar. 25, 1926, c. 88, 44 Stat. 223.)

U. S. C., Title 12, Sec. 570.

(a) Whenever and after any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States on account of such bank, or trust company, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall

be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Commissioner of Internal Revenue, when the facts shall appear to him, is authorized to remit so much of the said tax against any such insolvent banks and trust companies organized under State law as shall be found to affect the claims of their depositors.

(b) Whenever any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has been released or discharged from its liability to its depositors for any part of their claims against it, and such depositors have accepted, in lieu thereof, a lien upon subsequent earnings of such bank or trust company, or claims against assets segregated by such bank or trust company or against assets transferred from it to an individual or corporate trustee or agent, no tax shall be assessed or collected, or paid into the Treasury of the United States on account of such bank, or trust company, such individual or corporate trustee or such agent, which shall diminish the assets thereof which are available for the payment of such depositor claims and which are necessary for the full payment thereof.

(c) Any such tax so collected shall be deemed to be erroneously collected, and shall be refunded subject to all provisions and limitations of law, so far as applicable, relating to the refunding of taxes, but tax so abated or refunded after the date of the enactment of the Revenue Act of 1938 shall be reassessed whenever it shall appear that payment of the tax will not diminish the assets as aforesaid. The running of the statute of limitations on the making of assessment and collection shall be suspended during, and for ninety days beyond, the period for which, pursuant to this section, assessment or collection may not be made, and a tax which has been abated may be reassessed and collected during the time within which, had there been no abatement, collection might have been made.

(d) This section shall not apply to any tax imposed by the Social Security Act. As amended May 28, 1938, c. 289, sec. 818, 52 Stat. 579.

Title 20, Sec. 628, Code of the District of Columbia, 1929.

Sec. 628. Collector of taxes; to collect all revenues.—The collector of taxes for said District shall collect all revenues of the District and deposit the amounts collected daily with the Treasurer of the United States. (Mar. 3, 1881, 21 Stat. 460, c. 134).

Title 20, Sec. 634, Code of the District of Columbia, 1929

Sec. 634. Disbursement of taxes and appropriations; vouchers; settlement of accounts.—

All taxes collected shall be paid into the Treasury of the United States, and the same, as well as the appropriations made by Congress for the expenses of the District of Columbia, shall be disbursed for the expenses of said District, on itemized vouchers, which shall have been audited and approved by the Auditor of the District of Columbia, certified by said commissioners, or a majority of them; and the accounts of said commissioners, and the tax collectors, and all other officers required to account, shall be settled and adjusted by the General Accounting Office. (June 11, 1878, 20 Stat. 105, c. 180, sec. 4; June 10, 1921, 42 Stat. 20, c. 18.)

Title 20, Sec. 635, Code of the District of Columbia, 1929.

Sec. 635. Same; requisition by commissioners; appropriations not to be exceeded; accounting.—

All moneys appropriated for the expenses of the government of the District of Columbia, together with all revenues of the District of Columbia from taxes or otherwise, shall be deposited in the Treasury of the United States, as required by the provisions of section 634 of this title, and shall be drawn therefrom only on requisition of the Commissioners of the District of Columbia, such requisition specifying the appropriation upon which the same is drawn; and in no case shall such appropriation be exceeded either in requisition or expenditure; and the accounts for all disbursements of the commissioners of said District, shall be made monthly to the General Accounting Office by the auditor of the District of Columbia, on vouchers certified by the commissioners, as required by law. (July 1, 1882, 22 Stat. 144 c. 263,

sec. 3; Mar. 3, 1883, 22 Stat. 470, c. 95, sec. 2; June 10, 1921, 42 Stat. 20, c. 18.)

District of Columbia Code 1929, Supp. III, Sec. 970.

Title VI—Tax on privilege of doing business.—Where used in this title—

(a) The term "person" includes any individual, firm, copartnership, joint adventure, association, corporation (domestic or foreign), trust, estate, receiver, or any other group or combination acting as a unit, but shall not include railroad or railroad express companies which report to and are subject to regulation by the Interstate Commerce Commission under the provisions of the Interstate Commerce Act of 1887, as amended.

* * * * * * *

(d) The term "business" shall include the carrying on or exercising for gain or economic benefit, either direct or indirect, any trade, business, profession, vocation, or commercial activity in or on privately owned property and in or on property owned by the United States Government in the District of Columbia, not including, however, labor or services rendered by any individual as an employee for wages, salary, or commission.

(e) The term "gross receipts" means the gross receipts received from any business in the District of Columbia, including cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials, labor, or services or other costs, interest, or discount paid, or any other expenses whatsoever: *Provided,* That the "gross receipts" when used in connection with or in respect of financial transactions involving the sale of notes, stocks, bonds, and other securities, or the loan, collection, or advance of money, or the discounting of notes, bills, or other evidences of debt, shall be deemed to mean the gross interest, discount, commission, or other gross income earned by means of or resulting from said financial transactions: *Provided further,* That in connection with commission merchants, attorneys or

other agents, the term "gross receipts" shall be deemed to mean the gross amount of such commissions or gross fees received by them, and, as to stock and bond brokers, the term "gross receipts" shall be deemed to mean gross amount of commissions or gross fees received, the gross trading profit on securities bought and sold, and the gross interest income on marginal accounts from business done or arising in the District of Columbia: *Provided further*, that with respect to contractors the term "gross receipts" shall mean their total receipts less money paid by them to sub-contractors for work and labor performed and material furnished by such sub-contractors in connection with such work and labor.

* * * * * * *

Sec. 5. For the privilege of engaging in business in the District of Columbia, each person so engaged shall pay to the collector of taxes of the District of Columbia for the fiscal year 1937-1938 a tax equal to two-fifths of 1 per centum of the gross receipts in excess of $2,000 derived from such business for the calendar year 1936:

* * * * * * *

Sec. 6. National banks and all other incorporated banks and trust companies, street railroad, gas, electric lighting and telephone companies, companies incorporated or otherwise, who guarantee the fidelity of any individual or individuals, such as bonding companies, companies who furnish abstracts of titles, savings banks, and building and loan associations which pay taxes under existing laws of the District of Columbia upon gross receipts or gross earnings, and insurance companies which pay a tax upon premiums shall be exempt from the provisions of this title.

* * * * * * *

(Aug. 17, 1937, 50 Stat. 693, c. 690.)

Title 20, Sec. 970, Code of the District of Columbia, 1929, Supp. IV.

Sec. 970. Tax on privilege of doing business; definitions.—

* * * * * * *

(e) The term "business" shall include the carrying on or exercising for gain or economic benefit, either direct or indirect, any trade, business, profession, vocation, or commercial activity *including rental of real estate and rental of real and personal property, in any commerce whatsoever in the District,* in or on privately owned property and in or on property owned by the United States Government, [*in*] *or by* the District [of Columbia], not including, however, labor or services rendered by any individual as an employee for wages, salary, or commission. * * * (Aug. 17, 1937, 50 Stat. 688, c. 690, Title VI, Sec. 1; May 16, 1938, 52 Stat. 363, c. 223, Sec. 6 (a).)

Title 20, Sec. 760, Code of the District of Columbia, 1929, Supp. V.

Sec. 760. Same; banks, gas, electric lighting, and telephone companies.—

Each national bank as the trustee for its stockholders, through its president or cashier, and all other incorporated banks and trust companies in the District of Columbia, through their presidents or cashiers, and all gas, electric lighting, and telephone companies, through their proper officers, shall make affidavit to the board of personal-tax appraisers on or before the 1st day of August each year as to the amount of its or their gross earnings *or gross receipts, as the case may be,* for the preceding year ending the 30th day of June, *and each national bank and all other incorporated banks and trust companies respectively shall pay to the collector of taxes of the District of Columbia per annum 6 per centum on such gross earnings,* and each gas company, electric lighting company, and telephone company shall pay to the collector of taxes of the District of Columbia per annum 4 per centum on such gross receipts, from the sale of public utility commodities and services within the District of Columbia. And in addition thereto the real estate owned by each national or other incorporated bank, and each trust, gas, electric-lighting, and telephone company in the District of Columbia shall be taxed as other real estate in said District: *Provided,* That street-railroad companies shall pay *3* per centum per annum on their gross receipts and other taxes as provided by *existing* law, and

insurance companies shall continue to pay the *2* per centum on premium receipts as provided by *existing law*. Each gas, electric-lighting, telephone and street railroad company shall pay, in addition to the tax herein mentioned, the corporate income tax imposed by sections 980-980pp of this title, and the personal property tax on merchandise stock in trade.

(b) This section shall not apply to gross earnings or gross receipts for any fiscal year ending the 30th day of June prior to the fiscal year ending June 30, 1940. Taxes shall be levied and collected for the fiscal years preceding the fiscal year ending June 30, 1940, under the section as if this amendment had not been enacted. (July 1, 1902, 32 Stat. 619, c. 1352, Sec. 6, par. 5; April 28, 1904, 33 Stat. 564, c. 1815, Sec. 2; July 26, 1939, 53 Stat. 1107, c. 367, Title IV, Sec. 2.) (Part in italics added by 1939 amendment.)

APPENDIX B.

Federal-American National Bank and Trust Company.
Washington, D. C.

December 28, 1939.

Treasury Department,
Internal Revenue Service,
Baltimore, Maryland.

GENTLEMEN:

Reference is made to your letter of December 2, 1939 addressed to the Rock Creek Park Estates, Inc., % The American Company, 807-15th Street, N. W., Washington, D. C., in which you enclosed a copy of a report of the examination of the Income Tax Returns for the years 1936 and 1937 in which is shown an income tax deficiency for the two years in the aggregate amount of $1,706.17.

It is my opinion that the Rock Creek Park Estates, Inc. is not subject to income tax assessment for the following reasons;

The entire capital structure of the Rock Creek Park Estates consists of 2,000 shares of common stock which is owned by this Receivership as an asset. The stock being acquired by this trust through the Edson W. Briggs Com-

pany, which company was the owner of approximately 1,300,000 square feet of land located in this city. The property being subject to a first trust of $155,000.00 which was owned by the American Company and the second deed of trust in the amount of $90,000.00 being owned by the Federal-American National Bank and Trust Company. The Edson W. Briggs Company subsequently defaulted both trusts and the American Company instituted foreclosure proceedings and on October 14, 1932, the American Company and the Federal-American National Bank and Trust Company caused to be organized a corporation under the laws of the State of Delaware known as the Rock Creek Park Estates, Inc., the corporation having the following capital structure:

2,000 shares preferred stock, par value $100.00 each
2,000 shares common stock, no par value.

The claims of the American Company and the bank were settled as of November 9, 1932 at which time the amount due the American Company was $154,960.97 and the amount claimed by the bank being $90,520.91.

The Rock Creek Park Estates, Inc. then issued 1,550 shares of its preferred stock to the American Company in payment for its first lien on the property, retaining 450 shares of the preferred stock in its treasury. The corporation also issued 2,000 shares of no par common stock to the bank in exchange for its junior lien on the same property. The corporation operated for a period of about two years and sustained substantial loss. It was, therefore, unable to pay preferred accumulated dividends and in September of 1935 the corporation was reorganized on the following basis.

The preferred stock was retired by executing and delivering to the American Company a first deed of trust secured by all of the property in the sum of $181,272.50, note being dated September 6, 1935, payable on or before five years after date with interest at the rate of 6% per annum. The common stock was placed in a voting trust, the trustees being instructed to elect to the Board of Directors each year two representatives who were to be nominated by the American Company and two to be nominated by this receivership.

The above information is furnished you only that you may have a complete picture of how this corporation was formed and also the interest that this Receivership has in it which is complete ownership as evidenced by the 2,000 shares of common stock held in the assets of this trust.

It is my understanding that the Federal Government can collect no taxes against an insolvent or bankrupt bank until the depositors have been paid in full. The Act of March 1, 1879 was amended by Section 818 of the Revenue Act of 1938. These provisions are now incorporated in Section 3798 of the Internal Revenue Code, passed in February of the present year. Section 3798 (c) of the Internal Revenue Code was amended by the Revenue Act of 1939, paragraph (b) of which I believe applies to this case and reads as follows:

"The term 'agent' as used in 3798 (b) of the Internal Revenue Code shall be deemed to include a corporation acting as a liquidating agent."

One of the late cases which I find most applicable to this case is that of U. S. *v.* Sterling, 106 Fed. (2d) 178 decided in the Fourth Circuit, August 28th of the present year. In this case the judgment of the District Court was affirmed, but without prejudice to the Government "to assess and collect the tax when funds are available after the claims of the bank's depositors have been satisfied."

It is therefore my belief that inasmuch as I am holding as Receiver of the Federal-American National Bank and Trust Company, the 2,000 shares of stock of the Rock Creek Park Estates, Inc., that this is one of the assets of the insolvent bank in Receivership and, as the depositors have not been paid in full that the Rock Creek Park Estates, Inc. should not be subject to any assessment of income tax.

I shall therefore, appreciate it if you will give the above information careful consideration and if necessary, I request an opportunity for a hearing in your office prior to your levying any deficiency against the subject corporation.

Very truly yours,

FREDERICK J. YOUNG,
Receiver.

APPENDIX C.

TREASURY DEPARTMENT

Bureau of Internal Revenue
Atlantic Division, Technical Staff
3501 Internal Revenue Building
Washington, D. C.

August 21, 1941.

Office of Commissioner of Internal Revenue

Address reply to Head, Atlantic Division, Technical Staff and refer to C:TS:AD. PFC: ARM:LMD

Rock Creek Park Estates, Inc.,
% The American Company
807 15th Street, N. W.
Washington, D. C.

SIRS:

Reference is made to your claim for refund of income taxes of $1,090.79 for 1936 and $129.21 for 1937.

The basis of your claim is that the corporation is exempt from income tax under 12 U. S. C. A. 570.

Your contention that the corporation is exempt from income tax is conceded on behalf of the Commissioner of Internal Revenue.

The overassessments in tax shown in the attached statement will be made the subject of certificates of overassessment which will reach you through the Collector of Internal Revenue for your district.

Respectfully,

(Signed) G. W. FRIDT,
Acting Head, Atlantic Division,
Technical Staff.

Enclosure: Audit statement.

Statement.

C:TS:AD.
PFC:ARM:LMD.

In Re: Rock Creek Park Estates, Inc., % The American Company, 807 15th Street N. W., Washington, D. C.

Income Tax Liability for the Year 1936-1937.

Year	*Liability*	*Assessed*	*Overassessment*
1936	None	$1,090.79	$1,090.79
1937	None	129.21	129.21
Total	None	$1,220.00	$1,220.00

The conclusion of the Atlantic Division of the Technical Staff, claims for refund, and Internal Revenue Agent's report dated November 20, 1939, have been made the basis of the adjustments in this statement.

Rock Creek Park Estates, Inc. Year ended December 31, 1936

Schedule 1.

No change has been made in net income, however it has been conceded that the corporation is exempt from income tax.

Tax Assessed, Account #402407	$1,090.79
Tax Liability	None
Overassessment	1,090.79

The Portion of the above overassessment representing an overpayment, if any, will be refunded or credited under the provision of Section 322 of the Revenue Act of 1936.

Year ended December 31, 1937

Schedule 2.

See Explanation in Schedule 1

Tax Assessed, Account #401237	$129.21
Tax Liability	None
Overassessment	$129.21

The portion of the above overassessment representing an overpayment, if any, will be refunded or credited under the provisions of Section 322 of the Revenue Act of 1936.

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